In the Matter of License No. 124294
Issued to: ROBERT H. JAMES

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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ROBERT H. JAMES

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

On 27 May, 1952, an Examiner of the United States Coast Guard at Long Beach, California, suspended License No. 124294 issued to Robert H. James upon finding him guilty of negligence based upon a specification alleging in substance that while serving as Master on board the American SS MARINE FLIER under authority of the document above described, on or about 17 May, 1952, while said vessel was at sea, he navigated his vessel at an immoderate speed in a fog.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Appellant was represented by attorneys of his own selection and he entered a plea of "not guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence the testimony of seven members of the crew of the MARINE FLIER.

Counsel for Appellant then made his opening statement, the Second Mate who was on watch at the time of the collision testified, and Appellant testified in his own behalf.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the specification. He then entered the order suspending Appellant's License No. 124294, and all other licenses, certificates of service and documents issued to this Appellant by the United States Coast Guard or its predecessor authority, for a period of six months - three months outright and the balance on probation for one year from the beginning of the outright suspension.

From that order, this appeal has been taken, and it is urged:

I. "Certain findings of fact are not supported by the evidence." There is no substantial evidence to support the finding that the MARINE FLIER was entering dense fog or any fog at 2307 and the Second Mate's positive testimony establishes the fact that the weather was still clear when he called Appellant at 2310 only because of the

uncertain behavior of the approaching vessel. The MARINE FLIER did not enter dense fog, which substantially obstructed visibility, until 2318 at which time "standby" was ordered, fog signals were commenced and Appellant arrived on the bridge. Although the fog was dense enough from 2318 on to bring about the application of Article 16 and visibility may not have been more than a ship length or two at the time of collision, the evidence does not bear out the finding that the visibility was no more than a ship length at 2318.

II. "The Examiner failed to take into account numerous extenuating circumstances which justify, at least, modification of the penalty imposed to one less severe." Hindsight shows that it would have been better judgment for Appellant to have stopped the engines immediately after entering the bridge at 2318 but his first knowledge of existing fog conditions was when he was then confronted with a sudden emergency four minutes before the collision and he was entitled to take time to appraise himself of the situation before taking any action. The same criteria as to moderate speed in fog should not be applied to a ship with radar as to one which is approaching a vessel whose position can not be determined. The order imposed should be substantially reduced because this was an error of judgment by Appellant and he has never before been subjected to any disciplinary action during his thirty-one years at sea.

APPEARANCES: Messrs. McCutchen, Black, Harnagel and Greene of Los Angeles By Harold A. Black, Esquire, of Counsel; and William P. Crawford, Esquire, of Long Beach, of Counsel.

Based upon my examination of the record submitted, I hereby make the following

## FINDINGS OF FACT

On 17 May, 1952, Appellant was serving as Master on board the American SS MARINE FLIER and acting under authority of his License No. 124294 while said vessel was enroute from Long Beach to San Francisco, California.

At 2322 on this date, the MARINE FLIER was in a collision with the SS DAVID E. DAY, a T-2 type tanker. The MARINE FLIER is a C-4 type freighter of more than 10,000 gross tons. She had gotten underway in clear weather from Long Beach carrying a cargo of bulk ore and with a draft of 29 feet 2 inches forward, 29 feet aft.

The MARINE FLIER took her departure from Long Beach at 2024 and proceeded on various courses and speeds in intermittent fog with Appellant at the conn. The course had been set on 293 degrees gyro, 293 1/2 true, in order to proceed over the main shipping lane between Los Angeles and San Francisco, when the weather cleared at 2114 and Appellant ordered full speed ahead of approximately 16.b knots (100 RPM). At this time, Appellant turned the conn over to the Second Mate and went below. The Second Mate saw the image of the DAY on the radar scope for

the first time at about 2250. The other ship appeared to be 15 to 18 miles dead ahead and he kept it under observation at all times after this while the radar remained on the 20 mile scale. At about 2300, light fog patches were encountered but there was no change in the course or speed of the MARINE FLIER. A bow lookout had been stationed previous to this time.

The Second Mate did not plot the relative positions of the DAY which were observed on the radar scope and he did not inform Appellant about the approaching vessel until 2310 when she was about seven miles dead ahead. The Second Mate called Appellant on the telephone and told him that the ship up ahead was acting peculiarly. The slight fog condition which existed at this time was not mentioned. At about this time, the Second Mate changed course ten degrees to the right.

Just before Appellant arrived on the bridge at 2318, the MARINE FLIER entered a very heavy fog bank which reduced the range of visibility considerably until sometime after the collision. The Second Mate ordered "standby" on the engine telegraph and he commenced sounding fog signals. In compliance with standing orders, the engine speed was reduced to 80 RPM (about 13 knots) after the "standby" order was received. As soon as Appellant reached the bridge and the Second Mate had told him that the ten degree course change had not caused any appreciable change in the relative bearing of the other ship, Appellant immediately ordered a ten degree change of course to the right at 2318. He switched the radar to the four mile range scale and observed that the DAY was bearing nine degrees on the port bow of the MARINE FLIER at a distance of slightly more than two miles. The Second Mate maintained a lookout on the wing of the bridge subsequent to this time. At 2320, the "standby" order was repeated by the Second Mate and Appellant ordered a third course change of ten degrees to the right since the relative bearing of the DAY remained approximately the same.

When the lookout rang two bells at 2321 to indicate that he saw a vessel on the port bow and since the radar showed that the other vessel was closing on a collision course, Appellant put the engine telegraph on one-half speed ahead (40 RPM - approximately seven knots) and ordered hard right rudder. Seconds later, Appellant observed the dull glow of a light on the DAY and the Second Mate saw her green running light about two points on the port bow at a distance of approximately two ship lengths. The rudder of the MARINE FLIER remained hard right as Appellant ordered "stop" and then "full astern" shortly before the collision at 2322.

The MARINE FLIER was beginning to swing to starboard when her bow struck the starboard side of the DAY under her bridge. The engine speed of the MARINE FLIER was still 80 RPM at the time of the collision and there is no disclosure in the record as to the speed of the DAY. None of the witnesses from the MARINE FLIER heard any signals from the DAY prior to the collision and there is no evidence as to whether she sounded any fog signals.

The accident occurred at a distance of about ten miles and in a southwesterly direction from Point Dume, California. The DAY caught fire immediately and Appellant maneuvered to stand by and render assistance but the DAY continued on to Long Beach, California, under her own power.

## OPINION

The findings of the Examiner have been modified in accordance with Appellant's exceptions to the extent that such findings were not supported by substantial evidence in the record. Specifically, I am unable to find substantial evidence that the MARINE FLIER was entering dense fog at 2307 or that visibility was limited to one ship length when Appellant arrived on the bridge at 2318. But there is substantial evidence, including Appellant's own testimony, that the ship was in dense fog by the time he reached the bridge. And for the purpose of this decision, the four minutes before the collision occurred are the most important. I have also modified the findings of the Examiner in several less important details in order that my findings shall conform with the record.

Appellant contends that the Examiner's decision does not take into consideration certain circumstances which indicate that the order imposed should be less severe.

One of these circumstances is said to be that because Appellant was confronted with a sudden emergency and he had no knowledge of the fog until four minutes before the collision, he committed only an error of judgment by attempting to maneuver his ship out of the path of the approaching vessel rather than stopping the engines of his ship immediately after entering the bridge.

I cannot agree with this argument which is based upon the short space of time which was available to Appellant. An error of judgment is a mistake which a competent navigator might reasonably make when he has to choose among alternatives and it is later found that his choice was wrong. But one of the principal rules pertaining to navigation on water is that ships must proceed at a moderate speed in a fog; and that moderate speed depends upon the circumstances of the individual case. The Pennsylvania (1873), 86 U.S. 125. It has also been said that moderate speed in fog is "something materially less than that full speed which is customary and allowable when there are no obstructions in the way of safe navigation." The City of New York (D.C.N.Y., 1883), 15 Fed. 624.

In the present case, the ship was in a dense fog bank at night, she was approaching another vessel whose bearing had remained practically constant after the first ten degree course change, the MARINE FLIER was a large, heavily loaded vessel, and she was traveling over a much frequented traffic lane at the rate of approximately 1300 feet a minute. Appellant was aware of all these factors at least within a few seconds after he reached the bridge. He knew by looking at the radar scope that the other vessel was about two miles away and almost dead ahead. The only logical conclusion, even apart from the knowledge that the bearing had remained practically unchanged, was that the other vessel was heading for a port in the vicinity of Los Angeles and, therefore, she was on an almost directly opposite course.

Despite all of these known factors which dictated the exercise of greater than usual care, Appellant chose to attempt to avoid the DAY by changing the course of his ship and not reducing her speed below thirteen knots. The basic theory of safe navigation in fog is to stop rather than to try to dodge other ships. Upon this premise is based the rule that a ship is bound to use such

precautions as will enable her to stop in time to avoid a collision after the approaching vessel comes into sight. The Umbria (1897), 166 U.S. 404.

It is my opinion that the action taken by Appellant was not the conduct of a navigator who is considered to be judicially prudent and that the minimum precaution required under the existing circumstances was for Appellant to have ordered the engines stopped immediately after reaching the bridge. He could have done this as quickly as he ordered the ten degree change of course at 2318. An additional reason why Appellant is in a poor position to claim that he did not have sufficient time, is that he did not go to the bridge until eight minutes after he had been told by the Second Mate that a vessel up ahead was acting in a peculiar manner.

Since Appellant did not comply with the recognized standards applicable to speed in a fog, his choice amounted to negligence rather than simply an excusable error which was a fair exercise of discretion under the conditions confronting him.

Another circumstance, which Appellant says was not taken into account, is the fact that the location of the DAY was known to Appellant at all times after 2318 by means of radar observations. For this reason, it is urged that the same standard of moderate speed in fog should not be applied to radar equipped vessels as to ships which are proceeding in fog without the benefit of radar.

In this particular case, we are not concerned as to whether such an argument would have any validity with respect to some prior time when the two vessels were much farther apart. As mentioned above, we are primarily concerned with the four minute period commencing at 2318 when the two ships were approximately two miles apart and on rapidly closing courses.

It is generally true that a ship with radar will be held to a higher standard of care in fog based upon the analogy that there is a different standard of conduct required for a person with sound vision to avoid being negligent than there is for a blind man. The Australia Star, 1947 A.M.C. 1630. Radar "is the best anticollision device yet perfected." Electronic Navigational Aids (Rev.Ed. 1949), published by the United States Coast Guard - U. S. Government Printing Office. But in order for radar to attain its potential value to ships navigating in fog, navigators must utilize the advantages of radar to the fullest extent as well as recognizing its limitations. And prudent navigation requires that adequate use be made of all safety devices including radar.

The data obtained from the radar would have been most intelligently and usefully employed to prevent a collision is several ranges and bearings of the DAY had been plotted in order to obtain an estimate of her course and speed. After doing this, Appellant could, with accuracy and without guesswork, have selected the minimum change of course which would have resulted in the MARINE FLIER avoiding the collision by a wide margin. This procedure could have been carried out in a few minutes and the target was observed more than a half hour before the collision took place. A very definite change of course would also have served the purpose of informing the DAY, if she had radar, of the intention of the MARINE FLIER.

Regardless of whether Appellant should have changed the course of his vessel at all if he did

not have sufficient time to determine the course and speed of the DAY, Appellant had ample time to control the speed of his ship so as to avoid the collision. Due to the readily available information from the radar, Appellant was immediately put on notice that he should have checked the headway of the MARINE FLIER to a considerable degree, if not altogether. It is logical that the standards applicable to ships in fog without radar should apply even more forcefully to ships with radar when the latter are put on advance notice, by the radar data, of impending danger. It was particularly urgent in this case that Appellant should at least have ordered the engines stopped after he was informed by the Second Mate that the bearing of the other ship had remained almost constant even after the first ten degree course change.

Appellant's contention, as applied to the circumstances of this case, seems to be that a higher speed in fog should be permitted when a ship is equipped with radar to locate other ships; and that the radar equipped ship is not bound by the usual standards, which are employed to prevent collisions, even after a target has been sighted on the radar, so long as the other vessel is kept under observation on the radar scope and some avoiding action is attempted. But this is inconsistent with the Rules of the Road as interpreted by the courts as well as with the basic rule that a greater, rather than a lesser, responsibility rests upon the radar equipped vessel to take whatever action is necessary to avoid another vessel whose presence has been disclosed by the radar.

Regardless of the fact that Appellant has never before been subjected to disciplinary action, he must suffer the consequences of his failure to take proper action promptly in this case. His eight years' experience with radar makes it even more difficult to understand why this collision occurred.

## CONCLUSION

The requirements to substantially reduce speed and to proceed so as to be able to stop before colliding with another vessel apply even more strongly than usual in this case because Appellant's responsibility to avoid collision was increased by the radar equipment aboard the MARINE FLIER. A contrary determination would be tantamount to holding Masters in similar situations to a lesser degree of care, than is usually required by the Rules of the Road, when they are navigating with the assistance of radar. Since Appellant did not stop or even reduce the speed of his ship, he was negligent.

## ORDER

The Order of the Examiner dated at Long Beach, California, on 27 May, 1952, is AFFIRMED.

M. C. Richmond
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 29th day of October, 1952.